

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

N.L. Neilson,

Plaintiff,

v.

Michael Bell, et al.,

Defendants.

No. 1:22-cv-01265-ADA-CDB

ORDER DISMISSING ACTION FOR
IMPROPER REMOVAL AND REMANDING
MATTER TO KERN COUNTY SUPERIOR
COURT

(ECF No. 1)

On October 5, 2022, Plaintiff N.L. Neilson filed a request to remove to federal court a matter originally filed in California state court. For the following reasons, the Court must deny Plaintiff's request and remand this action to state court.

As an initial matter, federal statute permits only defendants to remove state actions to federal court. *See* 28 U.S.C. § 1441(a). A plaintiff who has chosen to file an action in state court generally cannot remove to federal court. *Progressive West Ins. Co. v. Preciado*, 479 F.3d 1014, 1017–18 (9th Cir. 2007). Even if Plaintiff were permitted to remove this matter to federal court, removal based on diversity of citizenship is only available within one year after the commencement of the state action. 28 U.S.C. § 1446(c)(1). Plaintiff provides no documentation regarding the state case, but the attached state court fee waiver form has a filing date of May 28, 2020, over two years before filing this notice of removal. Plaintiff's request also fails to include "a copy of all process, pleadings, and orders" in the state court case, as required under 28 U.S.C.

§ 1446(a). Finally, while Plaintiff's request contains an affidavit granting a fee waiver in Kern County Superior Court, this waiver does not have effect in this court. Plaintiff has neither paid this court's filing fee nor submitted an application to proceed in forma pauperis.

Accordingly,

1. Plaintiff's request to remove the state court action to federal court, (ECF No. 1), is denied with prejudice;
2. The matter is remanded to Kern County Superior Court;
3. The Clerk of Court is directed to close this case and terminate all pending motions.

IT IS SO ORDERED.

Dated: October 6, 2022


UNITED STATES DISTRICT JUDGE